

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Mortgage Banker License of:

No. 09F-BD032-BNK

3 **DHI MORTGAGE COMPANY, LTD.**
4 **LIMITED PARTNERSHIP AND**
5 **RANDALL C. PRESENT, PRESIDENT**
16430 N. Scottsdale Road, Suite 250
Scottsdale, Arizona 85253

NOTICE OF HEARING

6 Petitioners.

7
8 PLEASE TAKE NOTICE that, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 6-137,
9 6-138, and 41-1092.02, the above-captioned matter will be heard through the Office of
10 Administrative Hearings, an independent agency, and is scheduled for November 19, 2008, at 9:00
11 a.m., at the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona,
12 (602) 542-9826 (the "Hearing").

13 The purpose of the Hearing is to determine if grounds exist for: (1) the issuance of an order
14 pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to
15 take the appropriate affirmative actions, within a reasonable period of time prescribed by the
16 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and
17 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the
18 suspension or revocation of Petitioners' license pursuant to A.R.S. § 6-945; and (4) an order or any
19 other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage
20 bankers pursuant to A.R.S. §§ 6-123 and 6-131.

21 Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of
22 Arizona (the "Superintendent") delegates the authority vested in the Superintendent, whether implied
23 or expressed, to the Director of the Office of Administrative Hearings or the Director's designee to
24 preside over the Hearing as the Administrative Law Judge, to make written recommendations to the
25 Superintendent consisting of proposed Findings of Fact, Conclusions of Law, and Order. The Office
26 of Administrative Hearings has designated Lewis D. Kowal, at the address and phone number listed

1 above, as the Administrative Law Judge for these proceedings. Pursuant to Arizona Administrative
2 Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08, the
3 Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing, final
4 decisions pursuant to A.R.S. § 41-1092.08 or other order or process which the Administrative Law
5 Judge is specifically prohibited from entering.

6 Motions to continue this matter shall be made in writing to the Administrative Law Judge **not**
7 **less than fifteen (15) days** prior to the date set for the Hearing. A copy of any motion to continue
8 shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of
9 Administrative Hearings.

10 A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by
11 counsel, or to proceed without counsel during the giving of all evidence, to have a reasonable
12 opportunity to inspect all documentary evidence, to cross-examine witnesses, to present evidence
13 and witnesses in support of his/her interests, and to have subpoenas issued by the Administrative
14 Law Judge to compel attendance of witnesses and production of evidence. Pursuant to A.R.S.
15 § 41-1092.07(B), any person may appear on his or her own behalf or by counsel.

16 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be
17 made by a court reporter or by electronic means. Any party that requests a transcript of the
18 proceedings shall pay the cost of the transcript for the court reporter or other transcriber.

19 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant
20 Attorney General Craig A. Raby, (602) 542-8889, 1275 West Washington, Phoenix, Arizona 85007.

21 **NOTICE OF APPLICABLE RULES**

22 On February 7, 1978, the Arizona Department of Financial Institutions (the "Department")
23 adopted A.A.C. R20-4-1201 through R20-4-1220, which were amended September 12, 2001, setting
24 forth the rules of practice and procedure applicable in contested cases and appealable agency actions
25 before the Superintendent. The hearing will be conducted pursuant to these rules and the rules
26 governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through

1 R2-19-122. A copy of these rules is enclosed.

2 Pursuant to A.A.C. R20-4-1209, Petitioners shall file a written answer **within twenty (20)**
3 **days** after issuance of this Notice of Hearing. The answer shall briefly state the Petitioners' position
4 or defense and shall specifically admit or deny each of the assertions contained in this Notice of
5 Hearing. If the answering Petitioners are without or are unable to reasonably obtain knowledge or
6 information sufficient to form a belief as to the truth of an assertion, Petitioners shall so state, which
7 shall have the effect of a denial. Any assertion not denied is deemed admitted. When Petitioners
8 intend to deny only a part or a qualification of an assertion, or to qualify an assertion, Petitioners
9 shall expressly admit so much of it as is true and shall deny the remainder. Any defense not raised
10 in the answer is deemed waived.

11 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Petitioners will be**
12 **deemed in default** and the Superintendent may deem the allegations in this Notice of Hearing as
13 true and admitted and the Superintendent may take whatever action is appropriate, including
14 suspension, revocation, denial of Petitioners' license or affirming an order to Cease and Desist and
15 imposition of a civil penalty or restitution to any injured party.

16 Petitioners' answer shall be mailed or delivered to the Arizona Department of Financial
17 Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or
18 delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,
19 Arizona 85007 and to Assistant Attorney General Craig A. Raby, Consumer Protection & Advocacy
20 Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

21 **Persons with disabilities may request reasonable accommodations such as interpreters,**
22 **alternative format or assistance with physical accessibility.** Requests for accommodations must
23 be made as early as possible to allow time to arrange the accommodations. If accommodations are
24 required, call the Office of Administrative Hearings at (602) 542-9826.

25 **FACTS**

26 1. Petitioner DHI Mortgage Company, Ltd. Limited Partnership, (hereinafter "DHI") is

1 a foreign limited partnership authorized to transact business in Arizona as a mortgage banker, license
2 number BK 0901845, within the meaning of A.R.S. §§ 6-941, *et seq.* The nature of DHI's business
3 is that of making, negotiating, or offering to make or negotiate a mortgage banking loan or a
4 mortgage loan secured by Arizona real property within the meaning of A.R.S. § 6-941(5).

5 2. Petitioner Randall C. Present ("Mr. Present") is the President of DHI and is
6 authorized to transact business in Arizona as a mortgage banker within the meaning of A.R.S.
7 § 6-941(5), as outlined within A.R.S. § 6-943(F).

8 3. DHI and Mr. Present are not exempt from licensure as mortgage bankers within the
9 meaning of A.R.S. §§ 6-942 and 6-941(5).

10 4. An examination of DHI conducted by the Department, beginning August 6, 2007 and
11 concluding April 4, 2008, revealed that DHI and Mr. Randall C. Present:

- 12 a. Failed to prominently display their original mortgage banker license in their
13 principal place of business office; specifically:
 - 14 i. Petitioners displayed a copy of their original license;
- 15 b. Solicited and transacted business using an unapproved name; specifically:
 - 16 i. Petitioners used unlicensed names in transacting mortgage business on
17 loan applications, Good Faith Estimates and Truth in Lending
18 disclosures:
 - 19 1. DHI Mortgage-Phoenix Dietz Crane; and
 - 20 2. DHI Mortgage-Phoenix Urban Living;
- 21 c. Failed to include their name and license number as issued on the mortgage
22 banker's principal place of business license within the text of certain regulated
23 advertising or business solicitations and failed to fully comply with the
24 disclosure requirements of Title I of the Consumer Credit Protection Act (15
25 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12
26 U.S.C. §§ 2601 through 2617), and the regulations promulgated under these
acts; specifically:

- i. Petitioners failed to have the annual percentage rate (APR) appear at least as prominently as the interest rate within the text of certain advertising or business solicitations that included an interest rate;
 - ii. Petitioners have advertised stating the percentage of down payment without disclosing all of the required additional terms;
 - iii. Petitioners' advertising is missing the name and license number as issued on the mortgage banker's principal place of business license within the text of certain regulated advertising or business solicitations; and
 - iv. Failed to correct these violations from their last examination;
- d. Failed to conduct the minimum elements of reasonable employee investigations prior to hiring employees; specifically:
 - i. Failed to obtain a completed Employment Eligibility Verification (Form I-9), before hiring at least thirteen (13) employees;
 - ii. Failed to consult with an applicant's most recent or next most recent employer before hiring at least seven (7) employees, on at least nine (9) occasions verification was obtained after hire date, and on at least one (1) occasion verification was not completed at all;
 - iii. Failed to obtain a completed and signed employment application before hiring one (1) employee and on at least one (1) occasion the application was obtained after the hire date;
 - iv. Failed to inquire regarding an applicant's qualifications and competence before hiring at least seven (7) employees; on at least nine (9) occasions the inquiry was obtained after the hire date, and on at least one (1) occasion the inquiry was not complete;
 - v. Failed to obtain a current timely credit report from a credit reporting agency before hiring at least three (3) employees, on at least one (1)

1 occasion the credit report was incomplete, and on at least twenty-seven
2 (27) occasions the credit report contained derogatory credit with no
3 further investigation conducted;

4 vi. Failed to obtain a timely signed statement attesting to all of an
5 applicant's felony convictions, including detailed information
6 regarding each conviction before hiring at least one (1) employee, and
7 one (1) signed statement was obtained after hire date; and

8 vii. Failed to correct these violations from their last examination;

9 e. Failed to maintain originals or copies of loan transactions; specifically:

10 i. The application was missing from at least four (4) mortgage loan
11 files; and

12 ii. The document of final disposition ("DFD") from at least one (1)
13 mortgage loan file;

14 f. Failed to comply with the disclosure requirements of Title I of the Consumer
15 Credit Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate
16 Settlement Procedures Act (12 U.S.C. §§ 2601 through 2617), and the
17 regulations promulgated under these acts; specifically:

18 i. A good faith estimate was untimely involving one (1) borrower;

19 ii. A good faith estimate was missing from the loan files of eight (8)
20 borrowers;

21 iii. A truth in lending disclosure was untimely involving one (1) borrower;

22 iv. A truth in lending disclosure was missing from the loan files of eight
23 (8) borrowers;

24 v. A mortgage servicing transfer disclosure was untimely involving one
25 (1) borrower;

26 vi. A mortgage servicing transfer disclosure was missing from the loan
files of eight (8) borrowers;

- 1 vii. An Affiliated Business Arrangement disclosure was missing from the
2 loan files of eight (8) borrowers;
- 3 viii. Yield Spread Premiums were not disclosed on Good Faith Estimates
4 involving three (3) borrowers;
- 5 ix. A Broker fee was not disclosed on a Good Faith Estimate involving
6 one (1) borrower;
- 7 x. A denial letter was untimely involving seven (7) borrowers;
- 8 xi. A loan application was not dated involving one (1) borrower; and
- 9 xii. A Good Faith Estimate dated April 17, 2006, indicated that the seller
10 would pay a \$1,850.00 origination fee and an \$1,850.00 discount fee;
11 on the settlement statement the borrower was charged a \$3,700.00
12 mortgage broker fee instead;
- 13 g. Allowed borrowers to sign regulated documents containing blank spaces;
14 specifically:
- 15 i. Petitioners consistently had borrowers sign Anti-Coercion Statements
16 in blank at least thirty-eight (38) times;
- 17 ii. Petitioners consistently had borrowers sign Disclosure Notices with
18 blank spaces at least thirty-eight (38) times;
- 19 iii. Petitioners consistently had borrowers sign Application Disclosures
20 with amounts blank at least seven (7) times;
- 21 iv. Petitioners consistently had borrowers sign Broker Agreements with
22 the Third Party Fee section blank at least four (4) times;
- 23 v. Petitioners allowed borrowers to sign an Affidavit of Occupancy with
24 the occupancy status blank at least one (1) time; and
- 25 vi. Petitioners allowed borrowers to sign an authorization to complete
26 blank spaces without identifying the document and blank spaces to be
 completed at least one (1) time;

- 1 h. Made false promises, misrepresentations, or concealed essential or material
2 facts in the course of the mortgage banker business; specifically:
- 3 i. A review of complaint #4011365 filed with the Department shows a
4 material misrepresentation of the borrowers' assets to the lender, and;
5 false promises of a refinance by their loan originator were made; and
- 6 ii. A review of complaint #4011925 filed with the Department shows
7 Petitioners concealed material facts in the course of its mortgage
8 banker business by failing to properly report the employment status of
9 the borrower/complainant resulting in the loss of the
10 borrowers'/complainants' earnest money of two thousand dollars
11 (\$2,000.00);
- 12 i Failed to obtain a complete listing of checks written; specifically:
- 13 i. Petitioners' check register failed to include the payment's purpose;
- 14 j. Failed to maintain correct and complete trust subsidiary ledgers/verification;
15 specifically:
- 16 i. The trust ledger has no provision for the date received;
- 17 ii. The trust ledger has no provision for the amount disbursed or date
18 disbursed;
- 19 iii. The trust ledger has no provision for the disbursement's payee and
20 purpose;
- 21 iv. Petitioners have not reconciled each trust balance to each trust
22 subsidiary ledger at each reconciliation; and
- 23 v. Failed to correct these violations from their last examination;
- 24 k. Failed to use a statutorily correct written fee agreement when accepting
25 advance fees from borrowers; specifically:
- 26 i. Petitioners accepted advance fees without using a properly executed
written fee agreement involving at least three (3) borrowers; and

1 ii. Petitioners failed to obtain a written fee agreement when accepting an
2 advance fee at least one (1) time; and

3 l. Failed to use proper appraisal disclosures; specifically:

4 i. Petitioners used unlawful appraisal disclosures that limits a borrower
5 to 90 days in which the borrower may request a copy of an appraisal
6 for which the borrower has paid.

7 5. Based upon the above findings, the Department issued and served upon DHI and Mr.
8 Present an Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of Order
9 ("Cease and Desist Order") on September 9, 2008.

10 6. On September 23, 2008, Petitioners filed a Request For Hearing to appeal the Cease
11 and Desist Order.

12 CONCLUSIONS OF LAW

13 1. Pursuant to A.R.S. §§ 6-941, *et seq.*, the Superintendent has the authority and duty to
14 regulate all persons engaged in the mortgage banker business and with the enforcement of statutes,
15 rules, and regulations relating to mortgage bankers.

16 2. By the conduct set forth in the Findings of Fact, DHI Mortgage Company, Ltd. Limited
17 Partnership, and Mr. Present violated the following:

18 a. A.R.S. § 6-944(C) and A.A.C. R20-4-1805 by failing to prominently display the
19 mortgage banker license in the office of the mortgage banker;

20 b. A.R.S. § 6-943(N) by failing to use their proper name as issued on its principal place
21 of business license;

22 c. A.R.S. § 6-943(N) and A.R.S. § 6-946(E) by advertising for or soliciting business
23 without using the name and license number as issued on the mortgage banker's
24 principal place of business license and by failing to comply with the disclosure
25 requirements of Title I of the Consumer Credit Protection Act (15 U.S.C. §§ 1601
26 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601
 through 2617), and the regulations promulgated under these acts;

- d. A.R.S. § 6-943(O) and A.A.C. R20-4-102 by failing to conduct the minimum elements of reasonable employee investigations prior to hiring employees;
- e. A.R.S. § 6-946(A) and A.A.C. R20-4-1806(B)(6) by failing to maintain originals or copies of loan transactions;
- f. A.R.S. § 6-946(E) and A.A.C. R20-4-1806(B)(6)(e) by failing to comply with the disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated under these acts;
- g. A.R.S. § 6-947(A) and A.A.C. R20-4-1808, by allowing borrowers to sign regulated documents containing blank spaces;
- h. A.R.S. § 6-947(L) by making false promises, misrepresentations, or concealing essential or material facts in the course of the mortgage banker business;
- i. A.A.C. R20-4-1806(B)(3) by failing to maintain a complete listing of all checks written and the payment's purpose;
- j. A.A.C. R20-4-1806(B)(5) and A.A.C. R20-4-1806(C) by failing to properly maintain their trust subsidiary ledger and failing to reconcile each trust balance to each trust subsidiary ledger at each reconciliation;
- k. A.R.S. § 6-946(C) by failing to use a properly executed written fee agreement involving mortgage loan transactions; and
- l. A.R.S. § 6-946(C) by failing to use a proper appraisal disclosure.

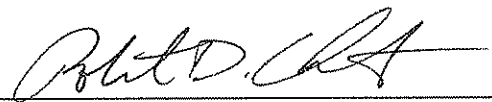
3. The violations, set forth above, constitute grounds for: (1) the issuance of an order pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to take the appropriate affirmative actions, within a reasonable period of time prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts, practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the suspension or revocation of Petitioners' license pursuant to A.R.S. § 6-945; and (4) an order or any other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage

1 bankers pursuant to A.R.S. §§ 6-123 and 6-131.

2 WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the
3 above-described violations, the Superintendent may affirm the September 9, 2008, Cease and Desist
4 Order pursuant to A.R.S. § 6-137; impose a civil money penalty pursuant to A.R.S. § 6-132; suspend
5 or revoke Petitioners' license pursuant to A.R.S. § 6-945; and order any other remedy necessary or
6 proper for the enforcement of statutes and rules regulating mortgage bankers pursuant to A.R.S.
7 §§ 6-123 and 6-131.

8 DATED this 15 day of October, 2008.

9 Felecia A. Rotellini
10 Superintendent of Financial Institutions

11 By 
12 Robert D. Charlton
Assistant Superintendent of Financial Institutions

13 ORIGINAL of the foregoing filed this 15th
14 day of October, 2008, in the office of:

14 Felecia A. Rotellini, Superintendent of Financial Institutions
15 Arizona Department of Financial Institutions
16 ATTN: Susan L. Longo
2910 N. 44th Street, Suite 310
17 Phoenix, AZ 85018

18 COPY mailed same date to:

19 Lewis D. Kowal, Administrative Law Judge
20 Office of the Administrative Hearings
1400 West Washington, Suite 101
Phoenix, AZ 85007

21 Craig A. Raby, Assistant Attorney General
22 Office of the Attorney General
1275 West Washington
Phoenix, AZ 85007

23 Robert D. Charlton, Assistant Superintendent
24 Joan S. Doran, Senior Examiner
25 Arizona Department of Financial Institutions
2910 North 44th Street, Suite 310
26 Phoenix, AZ 85018

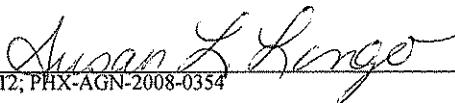
1 AND COPY MAILED SAME DATE by
2 Certified Mail, Return Receipt Requested, to:

3 Randall C. Present, President
4 DHI Mortgage Company, Ltd. Limited Partnership
5 16430 N. Scottsdale Road, Suite 250
6 Scottsdale, Arizona 85253
7 Petitioners

8 Randall C. Present, President
9 DHI Mortgage Company, Ltd. Limited Partnership
10 12357 Riata Trace Pkwy, Bldg. C
11 Austin, TX 78727
12 Petitioners

13 CT Corporation System, Statutory Agent for:
14 DHI Mortgage Company, Ltd. Limited Partnership
15 2394 E. Camelback Road
16 Phoenix, AZ 85016

17 Weiner, Brodsky, Sidman & Kider
18 1300 19th Street NW, 5th Floor
19 Washington, D.C. 20036-1609
20 Attorneys for DHI Mortgage Company, Ltd.
21 Limited Partnership

22 
23 314612; PHX-AGN-2008-0354